IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6660 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

CHANDUBHAI GOVINDBHAI SOLANKI (GAMECH VAGRI)

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Ms.Siddhi Talati, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/12/98

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India the prayer is in the nature of certiorari for quashing the detention order dated 8th May 1998 passed, under Section 3(2) of the Prevention of Anti-social Activities Act, 1985 (for short "PASA Act"), by the District Magistrate, Amreli.

2. The Detaining Authority considered three cases registered against the petitioner under the Prohibition Act and also considered the statements of six witnesses who requested that their identity and address be kept secret because of fear of the petitioner. From the aforesaid material the Detaining Authority came to subjective satisfaction that the petitioner is engaged in bootlegging activity which is illegal and in prosecution of this business he has created situation prejudicial to maintenance of public order. Accordingly the impugned order was passed which has been challenged in this writ petition on four grounds.

3. Learned Counsel for the petitioner and the learned A.G.P. have been heard.

4. I do not find any merit in the contention that valuable right of the petitioner under Article 22, Clause (5) of the Constitution of India has been violated because copies of three documents supplied to him are partly illegible. I have perused those documents from the file of the learned Counsel for the petitioner and I find that those documents are legible and could not have prevented in any way the petitioner from furnishing effective reply and effective defence. As such on this ground the detention order cannot be quashed.

5. Next ground has been that there is inordinate delay in passing the detention order. It was argued that the last case was registered against the petitioner on 22.1.1998 whereas the impugned order was passed on 8.5.1998. This delay, according to the learned Counsel for the petitioner, has rendered the impugned order invalid. However, Para : 8 of the Affidavit of the Detaining Authority offers sufficient explanation of this delay. The explanation is that the last offence was registered on 22.1.1998. Statement of six witnesses were recorded between 7.2.1998 to 11.2.1998. The sponsoring Authority submitted his proposal to the detaining Authority on 13.2.1998. It was received by the Detaining Authority on 16.2.1998. The detaining Authority personally verified the statements of witnesses on 24.3.1998. The impugned order was passed on 8.5.1998. In this way the satisfaction of the detaining Authority was partly complete on 24.3.1998. The District Magistrate has to attend to other functions also and if in these circumstances some time was taken by the detaining Authority in examining the entire material and in attending other business the impugned order which was passed on 8.5.1998 cannot be said to have been passed after inordinate delay. This ground has also, therefore, no merit.

6. The third ground has been that copy of one bail order was supplied in english and since the petitioner does not know english he was prevented from offering effective representation in his defence which has violated his constitutional right under Article 22(5) of the Constitution of India. This ground has also no substance. The detaining Authority has offered explanation on this also in Para : 9 of his Counter Affidavit. No doubt the bail order was mentioned in the grounds of detention, but from the grounds of detention it appears that the fact that the petitioner was enlarged on bail was not in dispute and it was known to the petitioner. The factum of release on bail was taken into

consideration by the detaining Authority for coming to subjective satisfaction that since after release on bail the petitioner indulged in identical activity he may continue to indulge in like activity and as such the detention order was passed. It is not mentioned either in the Affidavit or in the counter Affidavit that any observation adverse to the petitioner was made while deciding the bail application and that portion was considered by the detaining Authority. If some adverse portion or observation against the petitioner in the bail order would have influenced the mind of the detaining Authority certainly non-spply of copy of such document in a language which is not known and understood by the petitioner could have vitiated the impugned order and not otherwise. Thus, this ground has also no merit.

6. The last contention has been that the alleged prejudicial activities of the petitioner were not prejudicial for maintenance of public order. Hence the impugned order of detention is invalid.

7. The grounds of detention show that three cases under the Prohibition Act were registered against the petitioner. The statement of some of the witnesses also show that the petitioner is engaged in bootlegging activity and this activity has become his profession and occupation. The petitioner, therefore, can be called as bootlegger within the meaning of Section 2(b) of the PASA Act. However, a person who is mere bootlegger cannot be preventively detained unless his activities are prejudicial to maintenance of public order within the ambit of Section 3(4) of the PASA and also in view of explanation to sub.section 4 of Section 3 of the PASA Act.

8. As mentioned above the petitioner was rightly considered to be bootlegger. However, on the next question, viz. whether the activities of the petitioner were prejudicial to maintenance of public order, the three registered cases under the Prohibition Act do not indicate that when the premises of the petitioner was raided and contry made liquor was recovered, he created situation which was prejudicial for maintenance of public order. Hence these three cases are insufficient for coming to subjective satisfaction, that those incidents created disturbance of public order.

9. Regarding statements of six witnesses, I have gone through the extracts reproduced in the english translation of the grounds of detention. I am at a loss to find that none of these witnesses stated in the

particular incident that any member of the public collected or any fear in the mind of the public of the locality was created or even tempo of the life of the locality was disturbed by the prejudicial activities of the petitioner. It is also not stated by any of the six witnesses that peace and tranquillity in the area was disturbed by the so called prejudicial anti-social and illegal activities of the petitioner. On the other hand from these statements at the most it can be said that the witnesses had silently suffered at the hands of the petitioner and did not even raise alarm at the time of incident, what to say of lodging the FIR with the police. Thus, these incidents were between the petitioner and the six witnesses. Repetition of activities of the petitioner with six witnesses may not be called stray incidents but certainly these incidents cannot be said to be prejudicial for maintenance of public order.

10. The learned A.G.P. has drawn my attention to the statement of witness No.2 wherein he has stated that the petitioner tied the neck of the witness from Muffler. However, that can, at the most, be said to be an act of the petitioner which may amount to attempt to commit murder punishable under Section 307 I.P.Code and this was a situation of law and order for which the petitioner could be booked under Section 307 I.P.Code and not a situation prejudicial for maintenance of public order.

11. Likewise the learned A.G.P. has drawn my attention to the statement of witness No.4, but here also I do not find that the incident had disturbed even tempo of life of the locality or the community in the area. Statement of witness No.5 was also brought to my notice by the learned A.G.P., but here also it seems to be silent suffering of the witness at the hands of the petitioner without any adverse effect on maintenance of public order.

12. Thus, from the statements of six witnesses it can safely be said that the incidents narrated by them had no effect on maintenance of public order nor were prejudicial for maintenance of public order.

13. If the basic ground for passing the detention order, viz. the activities being prejudicial to maintenance of public order, is found lacking in the detention order it cannot be sustained.

14. The result, therefore, is that on this count the petition succeeds and is hereby allowed. The impugned order dated 8.5.1998 contained in Annexure : B to the

writ petition is hereby quashed. The petitioner shall be released forthwith unless he is wanted in some other criminal case.

sd/-

(D. C. Srivastava, J.)

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